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AUTHORITIES CITED.

CASES.

MISCELLANEOUS.

In the Supreme Court of the United States.

OCTOBER TERM, 1921.

CHARLES S. FAIRCHILD, APPELLANT, v. CHARLES E. HUGHES, AS SECRETARY OF State of the United States, and Harry M. Daugherty, as Attorney General of the United States.	No. 148.

APPEAL FROM THE COURT OF APPEALS OF THE DISTRICT OF COLUMBIA.

BRIEF FOR THE APPELLEES.

STATEMENT.

On July 7, 1920, the appellant, Fairchild, a citizen and resident of the State of New York, for himself and on behalf of the members of the American Constitutional League, organized to "uphold and defend the American Constitution against all foreign and domestic enemies," filed in the Supreme Court of the District of Columbia an original bill to enjoin Bainbridge Colby, as Secretary of State, his assistants, subordinates, and agents, from issuing any

proclamation declaring "that the so-called suffrage Amendment has been ratified or that it has become a part of the Constitution of the United States," and to enjoin A. Mitchell Palmer, as Attorney General, his assistants, subordinates, and agents, "from enforcing said Amendment." (R. 1–14.) The bill alleged that the American Constitutional League is an association composed of citizens of various States, who are taxpayers in their respective States and who, with one exception, have the right to exercise the elective franchise therein.

Numerous contentions are advanced in the bill, all of which resolve themselves into the proposition that the suffrage or Nineteenth Amendment was not validly adopted.

A rule to show cause why an injunction *pendente lite* should not be granted was issued, and on July 13, 1920, the Secretary of State and the Attorney General filed their return thereto, together with a motion to dismiss the bill. (R. 15, 16.)

On July 14, 1920, the Supreme Court of the District of Columbia, on final decree, dismissed the bill and discharged the rule to show cause, and plaintiff noted, and was allowed, an appeal to the Court of Appeals of the District of Columbia. (R. 16.)

On August 26, 1920, the Secretary of State issued a proclamation of the ratification of the Nineteenth Amendment (an event of which this court will take judicial notice), which was in full force and effect when the elections of November, 1920, were held. (R. 21.)

On September 21, 1920, the Secretary of State and the Attorney General filed in the Court of Appeals of the District of Columbia a motion to dismiss or affirm (R. 21–23), and on October 4, 1920, that court affirmed the decree of the Supreme Court of the District of Columbia on the authority of its previous decision in *United States ex rel. Widenmann* v. *Colby* (49 App. D.C. 358, 265 Fed. 998). This appeal was then taken.

The Widenmann case was brought to this court on writ of error. On motion by the Government to dismiss or affirm, filed at the present term (No. 92), this court, on December 19, 1921, affirmed the judgment of the Court of Appeals on the authority of the *National Prohibition Cases* (253 U. S. 350).

In the case at bar, Charles E. Hughes, the present Secretary of State, and Harry M. Daugherty, the present Attorney General, were on April 11, 1921, by order of this court, substituted as parties appellee in the place of Messrs. Colby and Palmer.

The Court of Appeals affirmed the decree of the Supreme Court of the District of Columbia in the present case on the authority of *Widenmann* v. *Colby* (49 App. D. C. 358, 265 Fed. 998). That case was a suit for mandamus to compel the Secretary of State to cancel the proclamation of ratification of the Eighteenth Amendment, it being contended that the Amendment had not been validly adopted. It was not alleged in the petition, nor otherwise claimed, that the Secretary of State had

not received official notice of ratification from the requisite number of States, but it was asserted that the officials of several of the States should not have issued the notices. The Court of Appeals, affirming the judgment of the Supreme Court of the District of Columbia, dismissing the petition, held that under section 205, Revised Statutes, the Secretary of State is required to issue his proclamation of an Amendment to the Constitution of the United States on receipt of notice from the required number of States of ratification of the Amendment, and has no discretion to determine the truth of the facts stated in the notices; that therefore the Secretary of State, instead of having failed in the case at bar to perform a duty imposed upon him by statute, the performance of which should be coerced by mandamus, had performed a duty enjoined upon him by statute in issuing the proclamation in question; and that, under the circumstances, there was no basis for the relief sought by the petitioner.

It was further held that even if the proclamation was canceled by order of the court, it would not affect the validity of the Amendment, inasmuch as, under Article V of the Constitution, it is the approval of the requisite number of States that gives validity to a constitutional Amendment, and not the proclamation of ratification by the Secretary of State, so that petitioner had no interest in the prayer of his petition, because, if granted, it would have availed him nothing.

The principal ground of relief sought by appellant in his bill was to prevent the Secretary of State from proclaiming the ratification of the suffrage Amendment. The prayer for an injunction to restrain the Attorney General from enforcing the Amendment was obviously incidental to the main relief requested. I know of no statutory duty which requires the Attorney General to enforce the Amendment. This brief, therefore, deals with the case principally from the standpoint of the Secretary of State. The Government has, however, made particular comment upon the allegations of the bill relating to the Attorney General at page 36 of this brief.

The Government contends that this appeal should be dismissed or the decree of the Court of Appeals affirmed, for the following reasons:

(*a*) The case presents only moot questions.

(*b*) The plaintiff has shown no status to raise these questions, as no concrete "case" of conflicting rights is presented, but only a request that the Court determine abstract questions *in thesi*.

(*c*) The questions raised by appellant are foreclosed to decision by the judiciary.

(*d*) Except only as limited in Article V, the Constitution may be amended in any respect deemed advisable.

I.

The Plaintiff's Status.

The judicial power is limited to "cases arising in law and equity" under the Constitution and laws of

the United States, and a preliminary question arises as to whether this appellant and those in behalf of whom he sues have any such standing in the matter now before the court as entitles them to be litigants in the instant case. I make this point with hesitation and reluctance, for I fully appreciate the fine spirit and the patriotic motives which induced the appellant and the members of the American Constitutional League to institute this suit. Whether they are right or wrong with respect either to the merits of woman suffrage or to the validity of the woman suffrage Amendment, I freely recognize that the suit is instituted by men whose only motive is to defend the Constitution as they interpret it. If there were more such men, who not only believe in but were willing to work for the maintenance of our institutions, there would be in this country a finer sense of what Grote calls "constitutional morality."

Nevertheless, the question remains whether the status of the appellant is such as to make this a concrete case within the Constitution. He is a well-known and justly honored citizen of the United States; but such fact alone does not entitle him to raise constitutional questions *in thesi;* otherwise it would be within the power of every citizen in the country to challenge the validity of laws, without respect to the question whether he or she was so especially and practically affected by the challenged law that its enforcement would mean a deprivation of some vested right. A "case" arises under the Constitution when a practical conflict of interest arises be-

tween two litigants and one of them asserts the application of a statute and the other asserts that the statute is invalid because it is repugnant to the Constitution. Then—and then only—is this court required in adjusting the controversy to decide whether such repugnancy in fact exists; and the fact that this court does not go forward to meet such questions, but waits until a truly litigated controversy comes to it, is justly regarded as one of the peculiarly beneficent institutions of our country.

In the absence of such a real controversy no one can ask this court to give an opinion upon an abstract proposition of law. Even the President could not ask the opinion of the court until a concrete controversy arose. At the beginning of our Government President Washington requested the Supreme Court to give an opinion on an abstract question and the court unanimously declined to do so, as beyond their power. If the Chief Magistrate may not do so, can it be that any citizen may file a bill which virtually asks the court to express an opinion as to the validity of a law, and, *a fortiori*, a presumptive part of the Constitution, until, in some practical way, the invalid law or part of the Constitution affects him in some direct way?

It is true that the appellant alleges that he is a taxpayer; but no question of taxation is directly involved in this suit, and the connection between it and the suffrage Amendment is too remote.

Such a question may be raised in a proper way. If, for example, a woman otherwise qualified for registry

as a voter were denied the right of registry under a State law which denied women the right to vote, then she would have a direct interest upon which a "case," within the meaning of the Constitution, could be based.

The appellant's interest is only the general interest which every citizen has in the maintenance of the Constitution, and that, I respectfully submit, is too general and not sufficiently concrete to justify the institution of a suit at law or in equity.

My duty to the court compels me to make this point, lest its silence, if the court proceeds to hear the controversy on its merits, might seem to justify the belief that a case could be instituted by any citizen with no other basis than his general interest as citizen in the perpetuation of our institutions.

II.

The Case Presents a Moot Question.

This court has often decided that it will not consider and pass upon cases presenting merely "moot questions or abstract propositions."

> *California* v. *San Pablo & Tulare R. R. Co.*, 149 U. S. 308, 314; *United States* v. *Hamburg-American S. S. Co.*, 239 U. S. 466, 475; *United States* v. *American-Asiatic S. S. Co.*, 242 U. S. 537; *Commercial Cable Co.* v. *Burleson*, 250 U. S. 360; *United States* v. *Alaska S. S. Co.*, 253 U. S. 113.

The principal relief sought by the appellant in his bill was that the Secretary of State be re-

strained "from issuing any proclamation that the so-called suffrage Amendment has been ratified or that it has become a part of the Constitution of the United States." After the dismissal of the bill by the Supreme Court of the District of Columbia, but before the hearing of the appeal in Court of Appeals, the Secretary, having received official notice that the requisite number of States had ratified the suffrage amendment, issued, pursuant to Revised Statutes, section 205, his proclamation of ratification on August 26, 1920 (R. 21), an event of which this court will take judicial notice. (*Dillon* v. *Gloss*, decided by this court on May 16, 1921; not yet officially reported. See, however, 41 Sup. Ct. Rep. 510, 513.)

Section 205, Revised Statutes, explicitly directs that—

> Whenever official notice is received at the Department of State that any Amendment proposed to the Constitution of the United States has been adopted, according to the provisions of the Constitution, the Secretary of State shall forthwith cause the Amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States.

Appellant does not contend that the Secretary did not receive official notice of the Amendment's ratification from the required number of States. His con-

tention is that several of the State legislatures were without power to ratify the Amendment, and that the State officials should not, therefore, have forwarded the notices.

It is obvious that there is now no occasion for this court to determine whether the relief prayed by appellant should have been granted, inasmuch as the act sought to be enjoined has been consummated.

The conditions now existing in the instant case are analogous to those which were present in *Wilson* v. *Shaw* (204 U. S. 24). In that case suit was brought in the Supreme Court of the District of Columbia to restrain the Secretary of the Treasury from paying out money in the purchase of property for the construction of the Panama Canal and also to restrain him from constructing the canal, borrowing money for that purpose, and issuing bonds therefor. The Supreme Court of the District of Columbia dismissed the bill, and its decree was affirmed by the Court of Appeals. On appeal to this court, Mr. Justice Brewer said (p. 30):

> If the bill was only to restrain the Secretary of the Treasury from paying the specific sums named therein, to wit, $40,000,000, to the Panama Canal Company, and $10,000,000 to the Republic of Panama, it would be sufficient to note the fact, of which we may take judicial notice, that those payments have been made, and that whether they were rightfully made or not is, so far as this suit is concerned, a moot question. (*Cheong Ah Moy* v. *United States*, 113 U. S. 216; *Mills* v. *Green*, 159

U. S. 651; *American Book Co.* v. *Kansas*, 193 U. S. 49; *Jones* v. *Montague*, 194 U. S. 147.)

For the reason stated, and upon other grounds not here material, the decree of the Court of Appeals was affirmed.

As in the Wilson case, so in the present suit it is sufficient to note the fact that the act sought to be restrained—the issuance by the Secretary of State of the proclamation of ratification of the suffrage Amendment—is now an accomplished fact.

It is true that appellant now seeks to change the form of relief desired into that of a mandatory injunction requiring the Secretary of State to issue a proclamation rescinding his former proclamation (Brief, p. 77), but this can not serve to eradicate the moot character of the instant case. Appellant stands in no better position before this court by altering the form of relief asked, for it is indisputable that it is not the proclamation of the Secretary of State, but the ratification by the requisite number of States, that gives vitality to an Amendment and makes it a part of the Constitution of the United States. Article V expressly provides that a proposed Amendment "shall be valid to all intents and purposes, as part of this Constitution, when *ratified* by the legislatures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress." The proclamation of the Secretary of State does not affect the validity of an Amendment. It is

obvious, therefore, that it would avail appellant nothing if the Secretary were required, as appellant now seeks, to rescind his proclamation of ratification, for the validity of the Amendment would not, in anywise, be affected. (See opinion Court of Appeals in *Widemann* v. *Colby*, 49 App. D. C. 358, 265 Fed. 998.)

The probable recurrence of the questions involved in this case can not serve to give "life" to the present proceeding. As was said in *Commercial Cable Co.* v. *Burleson* (250 U. S. 360, 362):

> We are of opinion that these anticipations of possible danger afford no basis for the suggestion that the cases now present any possible subject for judicial action, and hence it results that they are wholly moot and must be dismissed for that reason.

Nor is the situation changed because the action of the Secretary of State in proclaiming the ratification of the Amendment occurred during the pendency of this suit. Plainly the doctrine announced in *Wingert* v. *First National Bank* (223 U. S. 670, 672, referred to by appellant at page 15 of his brief), that "after the filing of a bill for an injunction defendants proceed at their peril even though no injunction is issued, and, if they go on to inflict actionable wrong upon the plaintiff, will not be allowed to defeat the jurisdiction of the court by their own act," has no application to the present case. The act of the Secretary of State in issuing his proclamation was not one which he could do or not as he saw fit. It was one specifically required and enjoined upon him by section 205,

Revised Statutes, upon receiving official notices of ratification from the required number of States. There is no contention in this proceeding that he did not receive the requisite notices. This phase of the question, therefore, falls clearly within the express language used by this court in *Mills* v. *Green* (159 U. S. 651). The court said (p. 653):

> It necessarily follows that when, pending an appeal from the judgment of a lower court, *and without any fault of the defendant*, an event occurs which renders it impossible for this court, if it should decide the case in favor of the plaintiff, to grant him any effectual relief whatever, the court will not proceed to a formal judgment, but will dismiss the appeal. (*Italics ours.*)

As the review sought by this appeal would, under the circumstances, be confined merely to the "abstract question" of the validity of the suffrage Amendment, the appeal should be dismissed, or the decree of the Court of Appeals affirmed.

III.

The contention that the Amendment to the Federal Constitution which extends the right of suffrage within the States thereby deprives the States of a republican form of government does not present a judicial question.

The fourth section of the fourth Article of the Constitution, which provides that the United States shall guarantee to every State in the Union a republican form of government, has been invoked in this court

upon several occasions; but upon each occasion the court has decided that the question whether the government of a State was republican in its nature is not a judicial question. For example, in *Luther* v. *Borden* (7 How. 1, 42), the court said by Chief Justice Taney:

> When the Senators and Representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the Government, and could not be questioned in a judicial tribunal. * * * The right to decide is placed there, and not in the courts.

Similar decisions were reached in *Pacific States Telephone & Telegraph Co.* v. *Oregon* (223 U. S. 118) and in other cases.

IV.

That contention, moreover, is clearly frivolous.

Since the adoption of the Constitution the right of suffrage has been repeatedly extended to more and more classes of citizens, both in the United States and throughout Europe, and yet no one has ever suggested that a State deprives itself of a republican form of government when it adopts universal suffrage. Nor can it be contended that when the Federal Government requires the States to extend the right of suffrage to women it thereby deprives the States of governments republican in

form. More than 50 years ago the right to vote was extended to the Negroes in language almost identical with that employed in the Nineteenth Amendment, and although the Fifteenth Amendment has been before the courts repeatedly no one has ever considered it possible to contend that when the Federal Government extended suffrage to the Negroes it deprived any State of a republican form of government.

It is true that the plaintiff contends that the Fifteenth Amendment does not constitute a valid precedent in view of the conditions prevailing in Reconstruction times. But this contention was answered by the Court of Appeals of Maryland last June in the suffrage case of *Leser* v. *Garnett* (114 Atl. 840). The court there said (p. 846):

> It was contended that the Fifteenth Amendment was a "war" Amendment, adopted at a time when men's passions and prejudices were aroused, and when restraints or limitations of any kind were irksome and intolerable and when the people were impatient and intolerant of anything that stood in the way of their will, and were unwilling to be shackled or hindered in the execution of their plans by mere constitutional limitations, and that therefore the adoption of this Amendment should not be accepted as a precedent, nor the decisions recognizing its validity accepted as conclusive of this case, for that reason, and for the further reason that the Fifteenth Amendment had been acquiesced in for so long that

such acquiescence was in itself equivalent to an express ratification by the States.

But we can not, in the face of the direct language of the Constitution describing the manner in which it may be amended, recognize the doctrine of amendment by acquiescence as a valid substitute for that method. Nor can we assume, no matter what the state of the public mind may have been, that the court, charged with the duty of guarding and supporting the Constitution, tacitly ratified its violation; but we must, on the contrary, assume that when it recognized the validity of the Amendment it did so in the belief that it was within the amending power of the Constitution.

Nor can we assume, because the court did not, in the cases to which we have referred, specifically discuss the extent of the amending power of the Constitution as affecting the validity of the Fifteenth Amendment, but assumed without assigning reasons for its conclusion that the Amendment was valid, that it did not consider every question involved in its conclusion. Nor can it be assumed that it permitted its conclusions to rest upon the authority of an Amendment which was proposed, adopted, and ratified in violation of the Constitution, whether that question was or was not directly put in issue by the pleadings or the arguments in the case. And when, therefore, in the cases cited, it based its decisions upon the assumption that the Fifteenth Amendment is a valid Amendment, we are bound by those decisions to

assume that it is a valid Amendment, and within the amending power, for there can be no other conclusion. The only power of amending the Constitution is that furnished by itself. Unless any Amendment the validity of which is questioned can be brought within that power, it must fall. When, therefore, the validity of an Amendment is upheld by competent authority, it can only be upon the theory that it is within the amending power of the Constitution; and when the Supreme Court assumed the validity of the Fifteenth Amendment, it necessarily decided that it was within the amending power. And, as the Nineteenth Amendment can not be distinguished in principle from the Fifteenth Amendment, it follows that it is within the amending power.

V.

The question whether the proposed Amendment to the Constitution has received the approval of the necessary number of State legislatures is not a judicial question.

The Secretary of State, by proclamation dated August 26th, 1920, declared that it appeared from official documents on file in the Department of State that the proposed Nineteenth Amendment had been ratified by the legislatures of 36 States, which he named in the proclamation, that the States whose legislatures had so ratified the said proposed Amendment constituted three-fourths of the whole number of States in the United States, and that by virtue

and in pursuance of section 205 of the Revised Statutes of the United States he did thereby certify that—

> the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

The plaintiff does not deny the truth of the statement in this proclamation that the Secretary of State has received from each of the 36 States named in this proclamation official notice that the legislatures of those States had approved the proposed Amendment. The plaintiff contends, rather, that, disregarding the proclamation of the Secretary of State, disregarding the provisions of section 205 of the Revised Statutes, and disregarding the certificates of the proper State authorities, this court may go behind those certificates and determine whether the proposed Amendment has been, in reality, approved by the necessary number of States.

(In view of the fact that two States have approved the proposed Amendment since the date of the proclamation by the Secretary of State (Appendix B), it would be necessary for the court to determine that the appropriate officials of three States have improperly certified to action of those States before the court can declare that the Amendment has not received the approval of the necessary number of States.)

It is submitted, however, that the certificate of appropriate State officials that the legislature of a State has approved a proposed Amendment to the

Constitution of the United States is conclusive. It is so made by section 205 of the Revised Statutes; and this court may properly so treat it.

The court has held repeatedly that where an act of Congress is before it the enrolled and signed bill is conclusive and the court will not go beyond it to the journals for the purpose of determining whether the bill has in reality received legislative approval.

> *Field* v. *Clark*, 143 U. S. 649, 672, 673, 680, where the question is discussed exhaustively. See also *Flint* v. *Stone Tracy Co.*, 220 U. S. 107, 143; *Rainey* v. *United States*, 232 U. S. 310, 317; *Lyons* v. *Woods*, 153 U. S. 649, 660, 663; *Harwood* v. *Wentworth*, 162 U. S. 547, 562; *The King* v. *Arundel*, *Hobart*, 109, 109b, 111 (English statutes); *Lapeyre* v. *United States*, 17 Wall. 191 (the date given in a presidential proclamation establishes conclusively that it was signed on that date); *Doe* v. *Braden*, 16 How. 635, 657, 658 (court may not inquire whether the person who ratified a treaty on behalf of a foreign nation had power to ratify it).

It seems that the same rule should be applied to the certificate of the officials of a State that the legislature of that State has ratified an Amendment to the Constitution. The court is not considering State action, for a legislature, in passing upon an Amendment, is not limited by restraints in the State constitution.

> *Hawke* v. *Smith*, 253 U. S. 221, 230.

The legislature is performing a Federal function. If, therefore, the court, when considering Federal legislation, may treat the enrolled and signed bill as conclusive, and may do so in spite of very specific provisions in the Constitution as to the manner in which acts of Congress shall be passed, the court may equally follow Federal law in treating the certificates of the State officials concerning a proposed Amendment to the Federal Constitution as conclusive.

Moreover, an inquiry into the truth of certificates of State officials that their States have approved an Amendment to the Constitution is no more judicial in its nature than would be a similar going behind the certificates of election of Presidential Electors, or of Members of the Senate or House of Representatives, or an inquiry whether a State possesses a republican form of government. Such questions are not judicial in their nature; and neither the Constitution nor Congress has extended the jurisdiction of the courts to cover such cases.

Indeed, when William H. Seward, Secretary of State, issued a proclamation declaring that if the resolutions of the legislatures of Ohio and New Jersey ratifying the Fourteenth "Amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid Amendment has been ratified in the manner hereinbefore mentioned, and so has become

valid, to all intents and purposes, as a part of the Constitution of the United States," the Senate and House of Representatives promptly adopted a concurrent resolution declaring that the Fourteenth Amendment had been duly ratified, and directing that it should be duly promulgated as such by the Secretary of State, whereupon Secretary Seward issued a new proclamation certifying that the said Amendment had "become valid to all intents and purposes as a part of the Constitution." (See Appendices C and D.)

So far as counsel have been able to discover, the power which Congress exercised in that case of deciding that the Fourteenth Amendment had been duly ratified has never been challenged in the courts during the 54 years which have elapsed since 1868, although the Amendment has been considered by this court at least a thousand times, and although it has been constantly invoked in the State and lower Federal courts.

The methods pursued by those who favored the Amendment have been criticized elsewhere. The Senate and House of Representatives of New Jersey, for instance, on May 5, 1868, adopted a resolution purporting to withdraw the assent of that State and declaring that 11 States had been excluded from Congress in order to secure the assent of two-thirds of both Houses to the submission of the Amendment; and that, finding that the assent of two-thirds of the remaining States could not be obtained, the Senate had ejected one of the Senators from New Jersey,

without pretext or justification, in order to carry out the Amendment.

> Flack, The Adoption of the Fourteenth Amendment, 166.

And the Legislature of Oregon, in October, 1868, declared that its ratification in 1866 had been effected by the votes of two members who were illegally and fraudulently returned, and that three days after that ratification the two members whose votes had secured it had been declared not entitled to their seats, and that on the same day the two duly elected members had entered their protest on the journal of the house, declaring that if they had not been excluded from their seats they would have voted against the Amendment and thereby defeated its adoption.

> Thorpe, Constitutional History of the United States, III, 400; Flack, The Adoption of the Fourteenth Amendment, 167, 168.

But, in spite of all the charges which have been made concerning the adoption of the Fourteenth Amendment, the question whether the Amendment was duly ratified has never been regarded as a judicial question by Congress, by the courts, nor by any of the thousands of interested parties throughout the United States at any time during the past 54 years.

In *White* v. *Hart* (1872, 13 Wall. 646), the court intimated that the manner in which the assent of Southern States to the Reconstruction Amendments had been secured could not be considered by the

courts because the courts were concluded by the action of the political department of the Government.[1] The court might well have quoted the language of Chief Justice Taney in *Luther* v. *Borden* (7 How. 1, 39):

> In forming the constitutions of the different States, after the Declaration of Independence, and in the various changes and alterations which have since been made, the political department has always determined whether the proposed constitution or amendment was ratified or not by the people of the State, and the judicial power has followed its decision.

This court certainly would not have attempted to decide whether the assents which had been recorded in favor of the Reconstruction Amendments had been properly so recorded.

As with the Fourteenth Amendment, so also in the case of the Nineteenth Amendment, the people of the

[1] In *White* v. *Hart* the State constitution impaired the obligation of contracts. It was contended that "her constitution was adopted under the dictation and coercion of Congress, and it is the act of Congress, rather than of the State; and that, though a State can not pass a law impairing the validity of contracts, Congress can, and that, for this reason also, the inhibition in the Constitution of the United States has no effect in this case." The court said that the proposition "is clearly unsound, and requires only a few remarks. Congress authorized the State to frame a new constitution, and she elected to proceed within the scope of the authority conferred. The result was submitted to Congress as a voluntary and valid offering, and was so received and so recognized in the subsequent action of that body. The State is estopped to assail it upon such an assumption. *Upon the same grounds she might deny the validity of her ratification of the constitutional Amendments. The action of Congress upon the subject can not be inquired into. The case is clearly one in which the judicial is bound to follow the action of the political department of the Government and is concluded by it.*" (Our italics.)

In criticism of the requirement of the ratification of the Fourteenth Amendment as a condition precedent to the readmission of the Southern States to their full constitutional rights, see Willoughby on the Constitution, page 523.

United States have acted on the belief that the proclamation of the Secretary of State was a conclusive pronouncement that the proposed Amendment had become a part of the supreme law of the land. The elections of 1920 and of 1921 have been held in accordance therewith. A President, a House of Representatives, and one-third of the Members of the Senate have been elected under the Amendment. So also have many governors, State legislatures, judges, and State and local officials. The country has given an interpretation which should not be lightly set aside—which possibly could not be set aside without impeaching all the elections which have been held since August 26, 1920, except in those States in which woman suffrage had been previously established by State law.

VI.

The judiciary is without power to decide political questions.

In my oral argument in the case of *State of Texas* v. *The Interstate Commerce Commission and the Railroad Labor Board* (Original No. 24, present term), I referred to the struggle in the Constitutional Convention as to whether or not the judiciary should have a general power of revision over both the wisdom and validity of the laws, both of State and Nation, in analogy to the power which had been exercised for many years by the French courts over legislative edicts. I showed that while such a power was thrice advo-

cated in the Constitutional Convention, and by some of its most distinguished members, and once lacked only a single vote to pass it, the Convention finally voted down any proposition that would give to the judiciary a general revisory power over legislation.

What the Constitutional Convention finally did was to grant to the judiciary power in "cases" arising either in law or in equity to determine which of two repugnant laws should apply to the facts of a concrete case; and this was the extent of the delegation of power. The framers of the Constitution drew a clear line of distinction between judicial power and extrajudicial power.

The evidence of the truth of this will be found in the proceedings of the convention in framing the text of the clause, which is the beginning of section 2, III, which reads:

> The judicial power shall extend to all cases in law and equity arising under this Constitution, the laws of the United States and treaties made, or which shall be made, under their authority.

The history of the formation of this text may be begun by quoting Randolph's and Madison's motion, passed on June 13, which reads:

> That the jurisdiction of the national judiciary shall extend to cases which respect the collection of national revenue, impeachments of any national officers, and questions which involve national peace and harmony.

This resolution is repeated *verbatim* in the series of resolutions reported, June 19, by the committee of the whole.

On July 18 the clause of "impeachments of national officers" was stricken out and it was then unanimously resolved to alter the said thirteenth resolution so as to read "That the jurisdiction of the national judiciary shall extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony."

This resolution is reported *verbatim* in the series of resolutions stated by the Journal to be referred to the first committee of five with instructions to report a Constitution.

On August 6 that committee reported the draft of a Constitution. The beginning of the third section of its eleventh article reads:

> The jurisdiction of the Supreme Court shall extend to all cases arising under laws passed by the Legislature of the United States.

On August 27, when the eleventh article of the draft Constitution was under consideration, and the above text was reached, the following proceedings took place as reported by Madison:

> Dr. Johnson moved to insert the words "*this Constitution and the*" before the word "laws." Mr. Madison doubted whether this was not going too far, to extend the jurisdiction of the court *generally to cases arising under the Constitution*, and whether it ought not to

> be *limited to cases of a judiciary nature. The right of expounding the Constitution, in cases not of this nature, ought not to be given to that department.* The motion of Dr. Johnson was agreed to, *nem. con., it being generally supposed that the jurisdiction given was constructively limited to cases of a judiciary nature.*

The beginning of the section thus then read:

> *The jurisdiction of the Supreme Court* shall extend to all cases arising under this Constitution and the laws of the United States and treaties made or which shall be made under their authority.

In spite of the true construction of the amended text being generally supposed in the convention to mean that the jurisdiction of the Supreme Court, in cases arising under the Constitution, was extended to cases of a "judiciary" nature and not extended to all cases generally whether judicial or extrajudicial, Madison was not satisfied. Not long after, while this section was still under consideration, he says:

> Mr. Madison and Mr. Gouverneur Morris moved to strike out the beginning of the third section, "The jurisdiction of the Supreme Court," and to insert the words, "judicial power," which was agreed to *nem. con.*

The section thus then read:

> *The judicial power* shall extend to all cases arising under, etc.

The Constitution itself now reads:

> The judicial power shall extend to all cases *in law and equity* arising under, etc.

"The judicial power," intended by the framers when making the said Amendment was the judicial power of the United States, both in law and equity, as mentioned in section 3, of article 11 of the draft, which, as previously amended, thus read at that particular moment:

> The judicial power of the United States both in law and equity, shall be vested in one Supreme Court, and in such inferior courts as shall, when necessary, from time to time, be constituted by the legislature of the United States.

It is thus clear the framers expressly intended that the judicial power of the United States should *not* extend to constitutional cases of an *extrajudicial* nature arising under the new Constitution. It is equally clear, however, that they expressly intended that the said judicial power should positively extend to constitutional cases of a "judiciary" or, as we would now say, justiciable nature arising under the Constitution. There was no doubt among the framers upon this head. Their only anxiety was to prevent the jurisdiction of the Supreme Court from extending to constitutional cases of an extra-judicial nature.

Twice in the history of this country the wisdom of Madison's fears that the judiciary might mingle in extrajudicial controversies have been vindicated. Each case has been an impressive example of how unworkable our institutions would have been if the judicial branch of the Government had exercised any general revisory power over the acts of Congress.

In the first of these instances, the Dred Scott case, a majority of this court attempted to settle the vexed question of slavery by nullifying a legislative measure that had been in existence for many years—the Missouri Compromise. Possibly no one cause besides slavery did more to precipitate the Civil War, with all its ghastly consequences, than the Dred Scott decision. It is easy now to see that the Missouri Compromise had passed beyond the realms of judicial controversy, and that adherence to it was a political question, and, therefore, extrajudicial.

The second case was the Electoral Commission of 1877, and while it is true that it may have averted another Civil War, yet the fact remains that the participation by the majority of this court in an extrajudicial controversy to determine the facts of a disputed Presidential election sensibly weakened for a time its moral authority, and no one would now justify it, except on the ground that it was a temporary expedient.

Such a result would inevitably follow if this court were to exceed its delegated duty to apply the Constitution and the laws to concrete cases by attempting in advance to decide abstract questions of constitutional law, especially when such questions affect or involve grave political differences between large classes of the American people.

Similarly for this court to set aside the woman's suffrage Amendment, after it has become an accomplished fact, would be to cause the very greatest dissension, because the question of its adoption was

essentially a political one, and after acute and, indeed, acrimonious difference of opinion, the Congress of the United States by a two-thirds vote proposed the Amendment and the political authorities of more than three-fourths of the States formally certified that their legislatures had ratified it. This was an adjudication by the people as to their right to amend the Constitution in this way, and for this court to nullify so preponderating an expression of popular will, and especially upon disputed questions of fact as to the manner in which 3 States out of 38 ratified the Amendment, would be to decide an extrajudicial question, and, as I have tried to show, the framers of the Constitution never intended such an assumption of authority.

VII.

Except only as limited in Article V, the Constitution may be amended in any respect deemed advisable.

The framers of our Constitution realized most thoroughly that political institutions are subject to change. While the Articles of Confederation had provided that—

> * * * The Articles of this Confederation shall be inviolably observed by every State and the Union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration shall be agreed to in a Congress of the United States, and be afterwards confirmed by the legislatures of every State (Article XI),

less than 10 years after those Articles had been offered to the States for ratification the need for amending them had become apparent, the Annapolis Convention had met, and then in turn the Philadelphia Convention had assembled, had agreed that mere amendments to the Articles would be insufficient, and, going beyond their instructions and delegated authority, had framed and proposed an entirely new Constitution. All this, to repeat, was within ten years from the time when Congress had proposed to the States a plan for a "perpetual" union, and within seven years from the time when the last of those States—Maryland—had agreed to that plan.

Nor did the framers of the new Constitution propose that it be adopted in accordance with the procedure laid down by the Articles of Confederation. The Constitution was in the first instance proposed by the Convention rather than by Congress;[1] it was ratified by conventions rather than by the State legislatures, and it provided that—

> The ratification of the conventions of nine States shall be sufficient for the establishment of this Constitution between the States so ratifying the same—

instead of requiring the assent of the legislatures of every State.[2]

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[1] Congress, it is true, did on Sept. 28, 1787, direct that the proposed Constitution "be transmitted to the several legislatures in order to be submitted to a convention of delegates chosen in each State by the people thereof, in conformity to the resolves of the Convention," but Article VII had not required that the Constitution be proposed by Congress.

[2] As is well known, North Carolina and Rhode Island did not enter the Union until after Washington had been inaugurated.

The Constitution, then, was a revolutionary change in the form of government, adopted in clear contravention of the strict rules laid down for the amendment of the Articles of Confederation. *The recent experience of the country had shown most unmistakably to the men of 1787 that if a government is to endure it must be possible to change the Constitution without waiting for unanimous consent.*

The new Constitution expressly provided that Amendments to it might be made. But it did far more than that. The discussions in the Constitutional Convention show clearly that the framers were anxious to make this provision effective and that for that reason they took pains to establish alternative methods of revising the Constitution.[3] They so framed Article V as to make it impossible for either Congress or the State legislatures to prevent the submission of Amendments and to make it impossible for State legislatures to obstruct absolutely any changes in the Constitution which might limit the powers of the legislatures. The power to propose Amendments was given to Congress but Congress was also directed to call a convention for proposing Amendments on application of the legislatures of two-thirds of the States, and it was provided that proposed Amendments should

> be valid to all intents and purposes, as part of this Constitution, when ratified by the legis-

[3] The discussions are set forth in Watson on the Constitution, pp. 1303-1307. See also Bancroft, History of the Constitution of the United States, II, 215-217.

> latures of three-fourths of the several States, or by conventions in three-fourths thereof, as the one or the other mode of ratification may be proposed by the Congress.

As Madison well said:

> The mode preferred by the Convention seems to be stamped with every mark of propriety. It guards equally against that extreme facility which would render the Constitution too mutable, and that extreme difficulty which might perpetuate its discovered faults. It, moreover, equally enables the general and the State governments to originate the amendment of errors as they may be pointed out by the experience on one side or on the other. (The Federalist, No. 43.)

After the Convention the men who took most active part in securing the adoption of the Constitution freely admitted that defects in their plan might appear after the new government had come into existence. Madison said, in No. 43 of the Federalist:

> That useful alterations will be suggested by experience, could not but be foreseen. It was requisite, therefore, that a mode for introducing them should be provided;

and Hamilton devoted most of his effort in the last number of the Federalist to showing that the amendment of the Constitution would not be unduly difficult.

Indeed, the Constitution would never have been ratified but for the prospect that it would be speedily amended to meet the objections which were raised in

a number of the States. The first ten Amendments were submitted by the First Congress at its first session, and the widespread demand for them was shown by the promptness with which they were ratified.

In short, the provisions of Article V which authorize Amendments were placed there after the experience of the country had shown their need most clearly; they were carefully devised for the purpose of making possible any change in our system of government for which there was a sufficiently strong demand throughout the country; and but for their presence in the Constitution the Constitution would never have been adopted. They are essential and important portions of the Constitution, entitled to such a construction as will secure the ends which were sought when they were made part of the supreme law of the land.

It is a popular error, due to the vivid and dramatic imagination of historians, that when the Constitution was completed its members were convinced as to its perfection.

Bancroft has a striking phrase stating that the members were "awe struck" with the result of their deliberation. The very contrary is true. A considerable number would not even sign it. Many members had left in disgust before the convention had adjourned. Only the powerful influence of Washington and the conciliatory wit of Franklin induced enough delegates to sign to give the appearance of unanimity. While it was signed as the unanimous act of the participating States, there was no approach to unanimity among the delegates.

They parted company agreed upon one thing, and one thing only, and that was that the Constitution was an imperfect instrument, and that Amendments were imperative. As all great master builders, truly they "builded better than they knew." The work was greater than even the most sanguine dreamed.

I mention this only because of its bearing upon the scope of the power to amend. The framers were not unmindful of the great importance to the new Government of the character of suffrage in the States. They had debated the subject as to the character of the electorate and the form of suffrage for many hours. (Madison's Debates, Aug. 7, 1787.) When, therefore, they provided a method for amending the Constitution they could not have been unmindful of the fact that there were wide differences of opinion as to the laws with respect to the suffrage.

When, therefore, they conferred a sweeping power of amendment, only expressly limited by three reservations, as to equal representation of the Senate and questions of taxation, they must have meant that no other limitation could be imposed upon the power of amendment. Indeed it is not too much to say that, having in mind the short-lived Confederation and the very grave doubts which even the wisest—as Washington, Franklin, Madison, and Hamilton—had with respect to the workability and permanency of the Constitution which they had adopted as a compromise, that they did not exclude from

the power of amendment a complete reconstruction of the whole Government, if such a course became necessary. Hence the provision for a general convention whenever two-thirds of the States so requested.

VIII.

Relief asked as to the Attorney General.

Section 2 of the Nineteenth Amendment provides:

> Congress shall have power to enforce this article by appropriate legislation.

The relief prayed against the Attorney General is that he be enjoined from enforcing the Amendment. (Bill, Rec. 14.) The only allegation of contemplated action, however, is that—

> if the above measure (Senate bill 4323, providing fine and imprisonment for any person who refuses to allow women to vote) should be passed, the second mentioned defendant, A. Mitchell Palmer, as Attorney General of the United States, would be empowered and required by law to enforce the provisions of said act * * *. (Bill, Par. XXVII, Pt. 2, Rec. 12.)

The bill in question was introduced in the Senate on May 4, 1920, which was during the second session of the Sixty-sixth Congress, by Senator Watson, of Indiana, and was referred to the Committee on the Judiciary. (Cong. Rec., vol. 59, pt. 7, p. 6494.) It was never reported out of committee during the Congress.

As yet Congress has passed no legislation looking to the enforcement of the Nineteenth Amendment.

Clearly no case is presented against the Attorney General.

CONCLUSION.

The appeal should be dismissed or the decree of the Court of Appeals affirmed.

Respectfully submitted.

JAMES M. BECK,
Solicitor General.
ROBERT P. REEDER,
Attorney.
W. MARVIN SMITH,
Assistant Attorney.

January, 1922.

APPENDIX A.

PROCLAMATION OF NINETEENTH AMENDMENT.

BAINBRIDGE COLBY, SECRETARY OF STATE OF THE UNITED STATES OF AMERICA.

To all to whom these presents shall come, greeting:

Know ye, that the Congress of the United States at the first session, Sixty-sixth Congress, begun at Washington on the nineteenth day of May in the year one thousand nine hundred and nineteen, passed a resolution as follows, to wit:

Joint Resolution proposing an Amendment to the Constitution extending the right of suffrage to women.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of each House concurring therein), That the following article is proposed as an Amendment to the Constitution which shall be valid to all intents and purposes as part of the Constitution when ratified by the legislatures of three-fourths of the several States.

"ARTICLE —.

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of sex.

"Congress shall have power to enforce this article by appropriate legislation."

And, further, that it appears from official documents on file in the Department of State that the Amendment to the Constitution of the United States proposed as aforesaid has been ratified by the legislatures of the States of Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Iowa, Kansas

Kentucky, Maine, Massachusetts, Michigan, Minnesota, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Dakota, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Texas, Utah, Washington, West Virginia, Wisconsin, and Wyoming.

And, further, that the States whose legislatures have so ratified the said proposed Amendment, constitute three-fourths of the whole number of States in the United States.

Now, therefore, be it known that I, Bainbridge Colby, Secretary of State of the United States, by virtue and in pursuance of section 205 of the Revised Statutes of the United States, do hereby certify that the Amendment aforesaid has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this 26th day of August, in the year of our Lord one thousand nine hundred and twenty.

[SEAL.] BAINBRIDGE COLBY.

APPENDIX B.

RATIFICATIONS OF NINETEENTH AMENDMENT SUBSEQUENT TO PROCLAMATION OF ITS ADOPTION.

DIVISION OF PUBLICATIONS,
DEPARTMENT OF STATE,
Washington, December 28, 1921.

Hon. JAMES M. BECK,
Solicitor General, Department of Justice.

SIR: In response to your letter of December 27th, I am directed by the Secretary of State to advise you

that since the announcement of the Secretary of State, dated 26th August, 1920 (a copy of which is herewith enclosed), that the Amendment to the Constitution extending the right of suffrage to women has become valid to all intents and purposes as a part of the Constitution of the United States, the Amendment has since been ratified by the State of Connecticut and the State of Vermont.

The records of this department show two records to have been transmitted by the State of Connecticut, the first advising that the resolution of ratification had been passed by the senate and the house of representatives on September 14th, 1920, the other, that the resolution had been passed by the senate and house of representatives on September 21, 1920. The first record was certified by the secretary of state of the State of Connecticut, on September 14, 1920, the second on October 15, 1920.

The resolution of the State of Vermont ratifying the Amendment was passed by the senate and house of representatives on February 8, 1921, approved by the governor on February 9, 1921, and certified by the secretary of state of the State of Vermont to this department on February 10, 1921.

I am, sir,

Your obedient servant,

JAMES L. DUNCAN,
Acting Chief of Division.

Appendix C.

PROCLAMATION OF FOURTEENTH AMENDMENT ON JULY 20, 1868.

WILLIAM H. SEWARD, SECRETARY OF STATE OF THE UNITED STATES.

To all to whom these presents may come, greeting:

Whereas the Congress of the United States, on or about the sixteenth of June, in the year one thousand eight hundred and sixty-six, passed a resolution which is in the words and figures following, to wit:

"Joint resolution proposing an Amendment to the Constitution of the United States.

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled, (two-thirds of both Houses concurring),* That the following article be proposed to the legislatures of the several States as an Amendment to the Constitution of the United States, which when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

"Article XIV.

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State.

"SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice-President, or hold any office, civil or military, under the United States, or under any State, who, having previously taken an oath, as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

"SECTION 4. The validity of the public debt of the United States, authorized by law, including debt incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United

States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

"SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

"SCHUYLER COLFAX,
"*Speaker of the House of Representatives.*
"LA FAYETTE S. FOSTER,
"*President of the Senate pro tempore.*

"Attest:
"EDWD. MCPHERSON,
"*Clerk of the House of Representatives.*
"J. W. FORNEY,
"*Secretary of the Senate.*"

And whereas by the second section of the act of Congress, approved the twentieth of April, one thousand eight hundred and eighteen, entitled "An act to provide for the publication of the laws of the United States, and for other purposes," it is made the duty of the Secretary of State forthwith to cause any Amendment to the Constitution of the United States, which has been adopted according to the provisions of the said Constitution, to be published in the newspapers authorized to promulgate the laws, with his certificate specifying the States by which the same may have been adopted, and that the same has become valid, to all intents and purposes, as a part of the Constitution of the United States;

And whereas neither the act just quoted from, nor any other law, expressly or by conclusive implication, authorizes the Secretary of State to determine

and decide doubtful questions as to the authenticity of the organization of State legislatures, or as to the power of any State legislature to recall a previous act or resolution of ratification of any Amendment proposed to the Constitution;

And whereas it appears from official documents on file in this department that the Amendment to the Constitution of the United States, proposed as aforesaid, has been ratified by the legislatures of the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, and Iowa;

And whereas it further appears from documents on file in this department that the Amendment to the Constitution of the United States, proposed as aforesaid, has also been ratified by newly constituted and newly established bodies avowing themselves to be and acting as the legislatures, respectively, of the States of Arkansas, Florida, North Carolina, Louisiana, South Carolina, and Alabama;

And whereas it further appears from official documents on file in this department that the legislatures of two of the States first above enumerated, to wit, Ohio and New Jersey, have since passed resolutions respectively withdrawing the consent of each of said States to the aforesaid Amendment; and whereas it is deemed a matter of doubt and uncertainty whether such resolutions are not irregular, invalid, and therefore ineffectual for withdrawing the consent of the said two States, or of either of them, to the aforesaid Amendment;

And whereas the whole number of States in the United States is thirty-seven, to wit: New Hamp-

shire, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Pennsylvania, Delaware, Maryland, Virginia, North Carolina, South Carolina, Georgia, Vermont, Kentucky, Tennessee, Ohio, Louisiana, Indiana, Mississippi, Illinois, Alabama, Maine, Missouri, Arkansas, Michigan, Florida, Texas, Iowa, Wisconsin, Minnesota, California, Oregon, Kansas, West Virginia, Nevada, and Nebraska;

And whereas the twenty-three States first hereinbefore named, whose legislatures have ratified the said proposed Amendment, and the six States next thereafter named, as having ratified the said proposed Amendment by newly constituted and established legislative bodies, together constitute three-fourths of the whole number of States in the United States:

Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, by virtue and in pursuance of the second section of the act of Congress, approved the twentieth of April, eighteen hundred and eighteen, hereinbefore cited, do hereby certify that if the resolutions of the Legislatures of Ohio and New Jersey ratifying the aforesaid Amendment are to be deemed as remaining of full force and effect, notwithstanding the subsequent resolutions of the legislatures of those States, which purport to withdraw the consent of said States from such ratification, then the aforesaid Amendment has been ratified in the manner hereinbefore mentioned, and so has become valid, to all intents and purposes, as a part of the Constitution of the United States.

In testimony whereof, I have hereunto set my hand, and caused the seal of the Department of State to be affixed.

Done at the city of Washington, this twentieth day of July, in the year of our Lord one thousand

eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

[L. S.] WILLIAM H. SEWARD, *Secretary of State.*

APPENDIX D.

PROCLAMATION OF FOURTEENTH AMENDMENT ON JULY 28, 1868.

WILLIAM H. SEWARD, SECRETARY OF STATE OF THE UNITED STATES.

To all to whom these presents may come, greeting:

Whereas by an act of Congress passed on the twentieth of April, one thousand eight hundred and eighteen, entitled, "An act to provide for the publication of the laws of the United States and for other purposes," it is declared that whenever official notice shall have been received at the Department of State that any Amendment which heretofore has been and hereafter may be proposed to the Constitution of the United States has been adopted according to the provisions of the Constitution, it shall be the duty of the said Secretary of State forthwith to cause the said Amendment to be published in the newspapers authorized to promulgate the laws, with his certificate, specifying the States by which the same may have been adopted, and that the same has become valid to all intents and purposes as a part of the Constitution of the United States.

And whereas the Congress of the United States, on or about the sixteenth day of June, one thousand eight hundred and sixty-six, submitted to the legislatures of the several States a proposed Amendment to the Constitution in the following words, to wit:

"Joint resolution proposing an Amendment to the Constitution of the United States.

"*Be it resolved by the Senate and House of Representatives of the United States of America in Congress assembled (two-thirds of both Houses concurring)*, That the following article be proposed to the legislatures of the several States as an Amendment to the Constitution of the United States, which, when ratified by three-fourths of said legislatures, shall be valid as part of the Constitution, namely:

"ARTICLE XIV.

"SECTION 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

"SECTION 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice President of the United States, Representatives in Congress, the executive and judicial officers of a State, or the members of the legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole

number of male citizens twenty-one years of age in such State.

"SECTION 3. No person shall be a Senator or Representative in Congress, or elector of President and Vice President, or hold any office, civil or military, under the United States, or under any State, who having previously taken an oath as a member of Congress, or as an officer of the United States, or as a member of any State legislature, or as an executive or judicial officer of any State, to support the Constitution of the United States, shall have engaged in insurrection or rebellion against the same, or given aid or comfort to the enemies thereof. But Congress may, by a vote of two-thirds of each House, remove such disability.

"SECTION 4. The validity of the public debt of the United States, authorized by law, including debts incurred for payment of pensions and bounties for services in suppressing insurrection or rebellion, shall not be questioned. But neither the United States nor any State shall assume or pay any debt or obligation incurred in aid of insurrection or rebellion against the United States, or any claim for the loss or emancipation of any slave; but all such debts, obligations, and claims shall be held illegal and void.

"SECTION 5. The Congress shall have power to enforce, by appropriate legislation, the provisions of this article.

"SCHUYLER COLFAX,
"*Speaker of the House of Representatives.*
"LA FAYETTE S. FOSTER,
"*President of the Senate pro tempore.*

"Attest:
"EDWD. MCPHERSON,
"*Clerk of the House of Representatives.*
"J. W. FORNEY,
"*Secretary of the Senate.*"

And whereas the Senate and House of Representatives of the Congress of the United States, on the twenty-first day of July, one thousand eight hundred and sixty-eight, adopted and transmitted to the Department of State a concurrent resolution, which concurrent resolution is in the words and figures following, to wit:

"IN THE SENATE OF THE UNITED STATES,

"*July 21, 1868.*

"Whereas the legislatures of the States of Connecticut, Tennessee, New Jersey, Oregon, Vermont, West Virginia, Kansas, Missouri, Indiana, Ohio, Illinois, Minnesota, New York, Wisconsin, Pennsylvania, Rhode Island, Michigan, Nevada, New Hampshire, Massachusetts, Nebraska, Maine, Iowa, Arkansas, Florida, North Carolina, Alabama, South Carolina, and Louisiana, being three-fourths and more of the several States of the Union, have ratified the Fourteenth Article of amendment to the Constitution of the United States, duly proposed by two-thirds of each House of the Thirty-ninth Congress; therefore,

"*Resolved by the Senate (the House of Representatives concurring)*, That said fourteenth article is hereby declared to be a part of the Constitution of the United States, and it shall be duly promulgated as such by the Secretary of State.

"Attest: GEO. C. GORHAM, *Secretary.*

"IN THE HOUSE OF REPRESENTATIVES,

July 21, 1868.

"*Resolved*, That the House of Representatives concur in the foregoing concurrent resolution of the Senate 'declaring the ratification of the Fourteenth

Article of Amendment of the Constitution of the United States.'

"Attest: EDWD. MCPHERSON, *Clerk.*"

And whereas official notice has been received at the Department of State that the legislatures of the several States next hereinafter named have, at the times respectively herein mentioned, taken the proceedings hereinafter recited upon or in relation to the ratification of the said proposed Amendment, called article fourteenth, namely:

The legislature of Connecticut ratified the Amendment June 30th, 1866; the legislature of New Hampshire ratified it July 7th, 1866; the legislature of Tennessee ratified it July 19th, 1866; the legislature of New Jersey ratified it September 11th, 1866, and the legislature of the same State passed a resolution in April, 1868, to withdraw its consent to it; the legislature of Oregon ratified it September 19th, 1866; the legislature of Texas rejected it November 1st, 1866; the legislature of Vermont ratified it on or previous to November 9th, 1866; the legislature of Georgia rejected it November 13th, 1866, and the legislature of the same State ratified it July 21st, 1868; the legislature of North Carolina rejected it December 4th, 1866, and the legislature of the same State ratified it July 4th, 1868; the legislature of South Carolina rejected it December 20th, 1866, and the legislature of the same State ratified it July 9th, 1868; the legislature of Virginia rejected it January 9th, 1867; the legislature of Kentucky rejected it January 10th, 1867; the legislature of New York ratified it January 10th, 1867; the legislature of Ohio ratified it January 11th, 1867, and the legislature of the same State passed a resolution in January,

1868, to withdraw its consent to it; the legislature of Illinois ratified it January 15th, 1867; the legislature of West Virginia ratified it January 16th, 1867; the legislature of Kansas ratified it January 18th, 1867; the legislature of Maine ratified it January 19th, 1867; the legislature of Nevada ratified it January 22d, 1867; the legislature of Missouri ratified it on or previous to January 26th, 1867; the legislature of Indiana ratified it January 29th, 1867; the legislature of Minnesota ratified it February 1st, 1867; the legislature of Rhode Island ratified it February 7th, 1867; the legislature of Delaware rejected it February 7th, 1867; the legislature of Wisconsin ratified it February 13th, 1867; the legislature of Pennsylvania ratified it February 13th, 1867; the legislature of Michigan ratified it February 15th, 1867; the legislature of Massachusetts ratified it March 20th, 1867; the legislature of Maryland rejected it March 23d, 1867; the legislature of Nebraska ratified it June 15th, 1867; the legislature of Iowa ratified it April 3d, 1868; the legislature of Arkansas ratified it April 6th, 1868; the legislature of Florida ratified it June 9th, 1868; the legislature of Louisiana ratified it July 9th, 1868; and the legislature of Alabama ratified it July 13th, 1868.

Now, therefore, be it known that I, William H. Seward, Secretary of State of the United States, in execution of the aforesaid act, and of the aforesaid concurrent resolution of the 21st of July, 1868, and in conformance thereto, do hereby direct the said proposed Amendment to the Constitution of the United States to be published in the newspapers authorized to promulgate the laws of the United States, and I do hereby certify that the said proposed Amendment has been adopted in the manner

hereinbefore mentioned by the States specified in the said concurrent resolution, namely, the States of Connecticut, New Hampshire, Tennessee, New Jersey, Oregon, Vermont, New York, Ohio, Illinois, West Virginia, Kansas, Maine, Nevada, Missouri, Indiana, Minnesota, Rhode Island, Wisconsin, Pennsylvania, Michigan, Massachusetts, Nebraska, Iowa, Arkansas, Florida, North Carolina, Louisiana, South Carolina, Alabama, and also by the legislature of the State of Georgia; the States thus specified being more than three-fourths of the States of the United States.

And I do further certify that the said Amendment has become valid to all intents and purposes as a part of the Constitution of the United States.

In testimony whereof I have hereunto set my hand and caused the seal of the Department of State to be affixed.

Done at the city of Washington this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and sixty-eight, and of the Independence of the United States of America the ninety-third.

[SEAL.] WILLIAM H. SEWARD,
Secretary of State.